

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

KEVIN McCABE,	)	2:08-CV-01232-PMP-GWF
	)	
Plaintiff,	)	
	)	
vs.	)	<b><u>ORDER</u></b>
	)	
RAMPARTS, INC., d.b.a. LUXOR	)	
HOTEL AND CASINO	)	
aka LUXOR-LAS VEGAS, et al.,	)	
	)	
Defendants.	)	
	)	

This action arises from events occurring on August 5, 2006, when Plaintiff Kevin McCabe allegedly dove into a swimming pool at Defendant Luxor Hotel rendering himself a quadriplegic. Plaintiff filed his original Complaint on July 10, 2008, alleging claims for negligence and negligence per se. On April 17, 2009, Plaintiff filed a Second Amended Complaint (Doc. #21) restating his claims for negligence and negligence per se, but adding a Third Cause of Action for Strict Products Liability.

On May 7, 2009, Defendant Ramparts, Inc., d.b.a. Luxor Hotel and Casino filed a Motion to Dismiss Plaintiff's Third Cause of Action (Doc. #22). Having read and considered the arguments set forth by the parties with respect to

1 Defendant's fully briefed Motion to Dismiss, the Court finds that Defendant's  
2 Motion to Dismiss Plaintiff's Third Cause of Action for Strict Products Liability  
3 must be granted.

4 Specifically, the Court rejects Plaintiff's argument that additional discovery  
5 should be completed to enable Plaintiff to respond to Defendant's Motion to  
6 Dismiss. Defendant's motion is brought for relief as a matter of law under Rule  
7 12(b)(6) of the Federal Rules of Civil Procedure, and should be granted because  
8 accepting the allegations set forth in the Third Cause of Action of Plaintiff's Second  
9 Amended Complaint as true, Plaintiff fails to state a claim for Strict Products  
10 Liability upon which relief could be granted. Specifically, Plaintiff has not, and  
11 clearly cannot allege that Defendant is engaged in the business of manufacturing or  
12 selling swimming pools. Neither does Plaintiff identify component parts of the  
13 swimming pool which are allegedly defective. Regardless, given its status as the  
14 owner of the premises on which the swimming pool in question is located, Defendant  
15 cannot be liable for Strict Products Liability under the law of the State of Nevada.

16 **IT IS THEREFORE ORDERED** that Defendant Ramparts, Inc., d.b.a.  
17 Luxor Hotel and Casino Motion to Dismiss Plaintiff's Third Cause of Action for  
18 Strict Products Liability (Doc. #22) is GRANTED.

19 DATED: June 9, 2009.

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21   
22 PHILIP M. PRO  
23 United States District Judge  
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